



2024:DHC:4422-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 27.05.2024

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W.P.(C) 7730/2024 & CM APPLs. 32093-94/2024

SETHIA ENTERPRISES THROUGH ITS PROPRIETOR MR
VIKASH JAIN

..... Petitioner

versus

COMMISSIONER DELHI GOODS AND SERVICE TAX AND
OTHERS

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Rakesh Kumar & Mr. Parveen Kumar
Gambhir, Advocates

For the Respondents:

Mr. Mimansak Bhardwaj, SPC for UOI.
Mr. Harpreet Singh, Senior Standing
Counsel with Ms. Suhani Mathur, Mr. Jatin
Kumar Gaur & Ms. Pritika Nagpal,
Advocates
Mr. Rajeev Aggarwal, ASC with Mr.
Prateek Badhwar, Ms. Shaguftha H.
Badhwar & Ms. Samridhi Vats, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 24.04.2024 whereby the impugned Show Cause Notice dated 12.12.2023, proposing a demand of Rs.



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12,42,094.00/- against the petitioner has been disposed of and a demand including penalty has been created against the petitioner. The order has been passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

2. Issue notice. Notice is accepted by learned counsel appearing for respondent. With the consent of the parties, the petition is taken up for final disposal today.

3. Learned counsel for Petitioner submits that Petitioner had filed a detailed reply dated 12.01.2024, however, the impugned order dated 24.04.2024 does not take into consideration the reply submitted by the Petitioner and is a cryptic order.

4. Perusal of the Show Cause Notice dated 12.12.2023 shows that the Department has raised grounds under separate headings i.e., net tax under declared due to non-reconciliation of turnovers in other returns and E-way bill information; reconciliation of GSTR-01 with GSTR 3-B; excess claim of Input Tax Credit ["ITC"]; the excess input tax credit (ITC) claimed on account of non-reconciliation of information declared in GSTR-3B and Excess ITC availed in GSTR-3B compared to the tax on inward supplies declared by suppliers. To the said Show Cause Notice, a detailed reply was furnished by the petitioner giving response under each of the heads with supporting documents.

5. The impugned order, however, after recording the narration records that the reply uploaded by the taxpayer is not satisfactory as the taxpayer has not attached sufficient documents in support of his reply. It states that



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*“And whereas, it is noticed that the Taxpayer filed reply/explanation within stipulated period and did not appear for Personal Hearing before Proper Officer on the given date and time, Further, another opportunity to submit reply and for the sake of natural justice opportunity for Personal Hearing, as per provision of Section 75(4) DGST Act, was also provided to the taxpayer by issuing “REMINDER” through the GST portal.**** Now, since no satisfactory explanation has been received from the taxpayer despite sufficient and repeated opportunities, which indicate that the taxpayer has nothing to say in the matter. The Section 155 of the CGST Act, 2017 provides that the burden of proof for availing input tax credit shall lie on the claimant which reads as "Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claims shall lie on such person." The taxpayer has not attached sufficient documents in support of his reply i.e. invoices, proof of payment etc. Hence, in view of aforesaid circumstances, the undersigned is left with no other option to create demand ex-parte, in accordance with the provisions of CGST / DGST Act & Rules, 2017, as per discrepancies already conveyed through SCN/ DRC-01.” The Proper Officer has opined that the reply is not satisfactory and Petitioner has not attached sufficient documents in support of his reply i.e. invoices, proof of payment etc.*

6. The observation in the impugned order dated 24.04.2024 is not sustainable for the reasons that the reply dated 12.01.2024 filed by the Petitioner is a detailed reply with supporting documents. Proper Officer had to at least consider the reply on merits and then form an opinion. He merely held that the reply is not satisfactory and taxpayer has not attached sufficient documents in support of his reply which ex-facie shows that



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Proper Officer has not applied his mind to the reply submitted by the petitioner.

7. Further, if the Proper Officer was of the view that any further details were required, the same could have been specifically sought from the Petitioner. However, the record does not reflect that any such opportunity was given to the Petitioner to clarify its reply or furnish further documents/details.

8. In view of the above, the impugned order dated 24.04.2024 cannot be sustained and is set aside. The Show Cause Notice is remitted to the Proper Officer for re-adjudication.

9. Petitioner may file a further reply to the Show Cause Notice within a period of 30 days from today. Thereafter, the Proper Officer shall re-adjudicate the Show Cause Notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law within the period prescribed under Section 75 (3) of the Act.

10. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of either party. All rights and contentions of parties are reserved.

11. The challenge to Notification No. 9 of 2023 and 56 of 2023 with regard to the extension of time is left open.



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12. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 27, 2024/vp